

EXHIBIT 1

IN RE: W.R. GRACE & CO., ET AL., DEBTORS.
TELEPHONIC DEPOSITION OF GAIL STOCKMAN, M.D.

Case No. 01-01139(JKF)
June 17, 2009

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

Chapter 11

Case No. 01-01139(JKF)
Jointly Administered

Ref. No. 21544

In re:)
)
W.R. GRACE & CO., et al.,)
)
Debtors.)
)

TELEPHONIC DEPOSITION
OF

GAIL STOCKMAN, M.D.

(Taken on Behalf of the Libby Claimants)

Taken at the Offices of
Asa & Gilman Reporting, Inc.
22 Second Avenue, West, Suite 2200
Kalispell, Montana
Wednesday, June 17, 2009 - 10:28 a.m.

Reported by Jolene Asa, RPR, and Notary Public
for the State of Montana, Flathead County

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<p>1 said by somebody else. Does that always make a 2 huge difference in our opinion? No. Sometimes it 3 does. 4 BY MR. HEBERLING: 5 Q. And I was asking whether in the majority 6 of cases you would prefer to have the physical 7 examination. 8 MR. WEHNER: Object to form. 9 THE WITNESS: Well, it's always good 10 if you have the opportunity to do a physical 11 examination. It makes you feel more secure in 12 your opinions, but is it absolutely necessary? In 13 many cases, it is not. 14 BY MR. HEBERLING: 15 Q. And is a physical examination also 16 important for the opportunity to get a history 17 from the patient regarding things that may or may 18 not be in the medical records? 19 A. Yes. 20 Q. Let's look at Exhibit 1. You've 21 identified that as your report in this case? 22 A. Yes. 23 MR. WEHNER: Can I just take a quick 24 look? You don't have any other copies of that. 25 Let's just make sure we're looking at the same</p>	<p>1 of the estimation of significant asbestos-related 2 disease in the Libby population. Do you see that? 3 A. Yes. 4 Q. And then at paragraph 22, toward the 5 bottom, about six lines up, you say, "Patients 6 have been misdiagnosed." Do you see that? 7 A. Yes. 8 Q. And you're referring to Libby there; 9 correct? 10 A. Yes. 11 Q. And then paragraph 51. 12 That reads, "It has been my personal 13 experience that patients diagnosed as having 14 asbestosis instead have chronic obstructive 15 pulmonary disease secondary to tobacco smoking." 16 Do you see that? 17 A. Yes. 18 Q. Does that refer to Libby as well? 19 A. Yes. 20 Q. And for each of those opinions that we've 21 just briefly discussed, does having examined or 22 treated Libby patients form an important part of 23 the basis for your opinions on the patients from 24 Libby? 25 A. Yes.</p>
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<p>1 thing here. 2 Why don't you use this one. 3 THE WITNESS: Look at this one? 4 MR. WEHNER: Yeah. Unless you're for 5 sure they're the same as the one you brought. 6 THE WITNESS: I'm sure. 7 BY MR. HEBERLING: 8 Q. Is it correct that you've offered a 9 number of opinions on the group of people who have 10 asbestos disease from Libby exposures in your 11 report? 12 MR. WEHNER: Object to form. 13 THE WITNESS: I'm sorry. Ask that 14 again. 15 BY MR. HEBERLING: 16 Q. Is it fair to say that you've offered 17 opinions on the group of people who have asbestos 18 disease from Libby exposures in your report? 19 A. That is a small part of my report. 20 Q. Yeah. 21 A. My report contains a lot of opinions in 22 addition to that. 23 Q. Let's look at paragraph 21. 24 A. Okay. 25 Q. At the end you refer to a gross inflation</p>	<p>1 Q. And is it fair to say generally that 2 examination or treatment of patients is important 3 to your thinking on asbestos-related disease 4 through your experience over the last 10, 5 15 years? 6 MR. WEHNER: Object to form. 7 THE WITNESS: I'm sorry. Repeat 8 that. 9 BY MR. HEBERLING: 10 Q. Is it fair to say generally that the 11 examination and treatment of patients has been 12 important to the development of your thinking on 13 asbestos-related disease over the last 10 to 14 15 years? 15 A. You know, I think equally important or 16 maybe more important is my time spent in review of 17 the medical literature; and, again, as I've said, 18 I can review medical records and look at chest 19 films and CT scans and sometimes get just as much 20 information. So is physical examination 21 essential? No. Is it sometimes helpful? Yes. 22 Q. You said it was equally important with 23 all of these other things. So the review of the 24 literature and review of films and medical records 25 is important; correct?</p>

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<p>1 A. Yes.</p> <p>2 Q. And, likewise, physical exams are</p> <p>3 generally important; correct?</p> <p>4 A. They may be. Sometimes there's not much</p> <p>5 information that you get on a physical</p> <p>6 examination, and certainly it's important -- I've</p> <p>7 done a number of studies on people who are dead</p> <p>8 who all you have available is medical records and</p> <p>9 x-rays, and I feel quite confident that I'm able</p> <p>10 to render opinions in those cases. So I don't</p> <p>11 think physical examination is always essential.</p> <p>12 Sometimes it's helpful, and if it's possible, we</p> <p>13 like to do it.</p> <p>14 Q. Do you think that having done so many</p> <p>15 examinations and having treated asbestos patients</p> <p>16 is important to the evolution of your thinking</p> <p>17 about asbestos disease?</p> <p>18 MR. WEHNER: Object to form.</p> <p>19 THE WITNESS: Certainly the more</p> <p>20 experience you have in dealing with patients and</p> <p>21 looking at x-rays and the more time you've devoted</p> <p>22 to reviewing medical literature -- All of those</p> <p>23 things together combine to help you form your</p> <p>24 opinions.</p> <p>25 /////</p>	<p>1 BY MR. HEBERLING:</p> <p>2 Q. Would you agree that it plays a</p> <p>3 significant role --</p> <p>4 MR. WEHNER: Object to form.</p> <p>5 BY MR. HEBERLING:</p> <p>6 Q. -- in the development of your thinking?</p> <p>7 A. I'm not sure it does -- did.</p> <p>8 Q. Let's go to paragraph 14.</p> <p>9 The first sentence says, "Since 2008, I</p> <p>10 have provided pulmonary second opinion reviews</p> <p>11 based on medical records and chest x-rays and CT</p> <p>12 scans to the Libby Medical Program on</p> <p>13 approximately 25 to 30 patients of the CARD</p> <p>14 clinic." Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. And so the Libby Medical Program, is that</p> <p>17 the Grace-funded Libby Medical Program?</p> <p>18 A. That's my understanding, yes.</p> <p>19 Q. As administered by HNA?</p> <p>20 A. Yes.</p> <p>21 Q. And you didn't do physical exams for</p> <p>22 these second opinion reviews; correct?</p> <p>23 A. Some of these patients were expired, so</p> <p>24 that's correct.</p> <p>25 Q. You didn't perform physical examinations</p>
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<p>1 BY MR. HEBERLING:</p> <p>2 Q. And having done the physical examinations</p> <p>3 over the years, it's an important part, along with</p> <p>4 other important parts, such as the literature and</p> <p>5 the films and the records; correct?</p> <p>6 MR. WEHNER: Object to form. Asked</p> <p>7 and answered.</p> <p>8 THE WITNESS: Again, doing physical</p> <p>9 examinations -- Sometimes people can have</p> <p>10 asbestosis and have a completely normal physical</p> <p>11 examination. Sometimes people have abnormal</p> <p>12 physical examinations that don't have anything to</p> <p>13 do with their asbestos-related problems. If</p> <p>14 you're asking me if I consider physical</p> <p>15 examination essential, no, I do not in all cases.</p> <p>16 BY MR. HEBERLING:</p> <p>17 Q. No. I was just asking if it's important</p> <p>18 generally to your thinking. I'm not asking</p> <p>19 whether it's essential or always required or</p> <p>20 anything like that.</p> <p>21 MR. WEHNER: Object to form. Asked</p> <p>22 and answered.</p> <p>23 THE WITNESS: It's not been the most</p> <p>24 essential thing in my development of knowledge</p> <p>25 about asbestos-related disease.</p>	<p>1 on any of these second opinion reviews; correct?</p> <p>2 A. Not on this particular bunch that I'm</p> <p>3 referring to in this first sentence.</p> <p>4 Q. Okay. That's 25 to 30 patients?</p> <p>5 A. Yes.</p> <p>6 Q. And all of them have had exposure to</p> <p>7 Libby asbestos; correct?</p> <p>8 A. That's my understanding.</p> <p>9 Q. Then the next sentence says, "In</p> <p>10 addition, I have seen and examined 12 to</p> <p>11 15 patients for the Libby Medical Program." Do</p> <p>12 you see that?</p> <p>13 A. Yes.</p> <p>14 Q. And you did physical examinations on</p> <p>15 these; correct?</p> <p>16 A. Yes.</p> <p>17 Q. But you did not follow up with treatment?</p> <p>18 A. No.</p> <p>19 Q. And, again, all of these patients had</p> <p>20 exposure to Libby asbestos?</p> <p>21 A. That was certainly the allegation, yes.</p> <p>22 Q. And you would have confirmed that through</p> <p>23 history?</p> <p>24 A. Yes.</p> <p>25 Q. Then the next clause says, "And I have</p>

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<p>1 evaluated and followed 15 to 20 patients from 2 Libby who were either self-referred or referred by 3 their primary physicians." Do you see that? 4 A. Yes, I do. 5 Q. And, of course, you did physical 6 examinations on these people? 7 A. Yes. 8 Q. And some treatment as well? 9 A. Yes. 10 Q. And, again, all of these people had 11 exposure to Libby asbestos? 12 A. Yes. 13 Q. So doing the math, I see a maximum of 14 35 patients you've done physical examinations on? 15 A. That's probably about correct. 16 Q. And were these patients important to the 17 formulations of your opinions on asbestos disease 18 from Libby exposures? 19 MR. WEHNER: Object to form. 20 THE WITNESS: They were certainly 21 important in that they served as a sample of 22 patients who are alleged to have asbestos-related 23 disease from Libby. 24 BY MR. HEBERLING: 25 Q. And, again, doing the math, from the</p>	<p>1 followed, you'd have access to the records of 2 those as well; right? 3 A. Yes. 4 Q. Would you agree, with only 35 patients 5 examined, you do not have a sufficient number to 6 do a scientific study of asbestos disease from 7 Libby exposures? 8 A. I would agree with that. Certainly not 9 an epidemiological study. 10 Q. You don't have a copy of ATS 2004 with 11 you, do you? 12 A. I don't know if I do or not. 13 Yes, I do. 14 MR. WEHNER: Can I see it? 15 BY MR. HEBERLING: 16 Q. Good. I've got one as well. 17 A. Okay. 18 MR. WEHNER: Are we going to mark 19 your copy or her copy? 20 MR. HEBERLING: Mine is written on 21 all over. I'm not going to insist on marking it. 22 If anyone else wants to -- 23 THE WITNESS: This is my only copy. 24 MR. HEBERLING: Yeah. That's her 25 only copy. It's a familiar document. I don't</p>
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<p>1 first category there were a maximum of 30 for whom 2 you did a records and films review? 3 A. Yes. 4 Q. And were these patients also important in 5 the formulation of your opinions about asbestos 6 disease from Libby exposures? 7 A. Yes. 8 Q. And as to the first category, the records 9 review cases, do you still have access to these 10 reviews? 11 A. Access to the -- 12 Q. To these reviews? 13 A. To my reports, do you mean? 14 Q. Yes. 15 A. Yes. 16 Q. And for the 12 to 15 you examined for the 17 Grace Libby Medical Program, do you still have 18 access to the records on those? 19 A. Those would be at Rocky Mountain Heart & 20 Lung. 21 Q. Right. And you work there? 22 A. Yes. 23 Q. So you would have access to them? 24 A. Yes. 25 Q. Then for the 15 or 20 that you have</p>	<p>1 think it's necessary to mark it. 2 BY MR. HEBERLING: 3 Q. Does that appear to be the American 4 Thoracic Society 2004 Diagnosis and Initial 5 Management of Nonmalignant Diseases Related to 6 Asbestos? 7 A. Yes. Actually, it was -- The official 8 statement was dated December 12th, 2003, but it's 9 called the 2004 document. 10 Q. Because that's when it was published? 11 A. Probably. 12 Q. Bottom left column. Do you see the 13 notation of the publication? 14 A. Yes. Uh-huh. 15 Q. Yeah. And that is what we've discussed 16 before as a document that pulmonologists and 17 others who treat lung disease use in diagnosing 18 asbestos-related disease; correct? 19 A. It's certainly a guideline. 20 Q. And this is the one -- You've testified 21 that you use it as well; correct? 22 A. Yes. 23 Q. In the left-hand column on the first 24 page, second paragraph, it says, This statement 25 presents guidance for the diagnosis of</p>

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<p>1 THE WITNESS: I have seen many people 2 with pleural plaques. 3 BY MR. HEBERLING: 4 Q. Right. And you don't consider pleural 5 plaques a disease; right? 6 MR. WEHNER: Objection. Asked and 7 answered. 8 THE WITNESS: You know, I consider it 9 a marker of asbestos exposure, and I have seen 10 those. I have not seen anybody with restrictive 11 lung disease from diffuse pleural thickening. 12 BY MR. HEBERLING: 13 Q. So would it be correct to say that in all 14 of these patients listed in paragraph 14 you have 15 not diagnosed any with asbestos-related pleural 16 disease; correct? 17 A. No. I've diagnosed some with pleural 18 plaques. 19 Q. And are you diagnosing that as a disease? 20 A. I am diagnosing it as an entity, as a 21 marker of asbestos exposure. Do I think it's 22 causing them symptoms or signs? No. 23 Q. Okay. So I still don't think I've quite 24 got an answer. You haven't actually diagnosed 25 anybody with asbestos-related pleural disease;</p>	<p>1 BY MR. HEBERLING: 2 Q. Of course there's no way to tell who that 3 has been from the information at paragraph 14; 4 correct? 5 A. Because I didn't keep a record. 6 Q. And just to make the record clear, you 7 haven't delivered any medical records of any of 8 the patients referenced at paragraph 14; correct? 9 A. I have not personally delivered any 10 records, no. 11 Q. To us? 12 A. No. 13 Q. Right. And of the patients, again, 14 referenced in paragraph 14, where there's COPD 15 have you diagnosed emphysema? 16 A. Again, you know, if they had significant 17 emphysematous changes on x-ray, I would have 18 probably mentioned the term "emphysema," but COPD 19 covers emphysema and chronic bronchitis and 20 reactive airways disease. 21 Q. Let's go to paragraph 52. 22 It begins, "Dr. Whitehouse states in his 23 report to this court that only 15 percent of 24 smokers develop clinically significant COPD." Do 25 you see that?</p>
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<p>1 correct? 2 MR. WEHNER: Object to form. 3 THE WITNESS: In the sense that I do 4 not think that asymptomatic pleural plaques are a 5 disease, that's correct. 6 BY MR. HEBERLING: 7 Q. I'm sorry. It's getting late, but did 8 you say that you had diagnosed anybody with 9 diffuse pleural thickening? 10 A. I said I had not. 11 Q. That's what I thought. Okay. 12 And, again, of all of these people 13 referenced in paragraph 14, are they all smokers 14 or ex-smokers? 15 A. I can't tell you that without reviewing 16 their records, but certainly the patients with 17 COPD are either current or ex-smokers. 18 Q. And, of course, our side can't evaluate 19 what you've done because we haven't received any 20 of the records either; correct? 21 MR. WEHNER: Object to form. 22 THE WITNESS: No. I don't know that. 23 I know that when the doctors at the CARD clinic 24 refer someone over, they certainly get a copy of 25 my report.</p>	<p>1 A. Yes. 2 Q. Now, that statement actually comes from 3 ATS 2004; correct? 4 A. I don't recall that -- seeing that on ATS 5 2004. 6 Q. I can't find it right now. The statement 7 ultimately originates in the surgeon general's 8 report; correct? 9 MR. WEHNER: Object to form. 10 THE WITNESS: I don't know where he 11 got the statement, but I don't believe that it's 12 true. I certainly don't agree with it. 13 BY MR. HEBERLING: 14 Q. Looking at the December 2008 15 Dr. Whitehouse report, at page 48 the bottom line 16 says, ATS 1995, page 79, states, Only about 17 15 percent of cigarette smokers develop clinically 18 significant COPD. Do you see that? 19 A. I see that. I guess that would depend on 20 what your definition of clinically significant is. 21 Q. And are you familiar with the ATS 1995 22 COPD statement? 23 A. I'm sure I've looked at it. 24 Q. You cite at paragraph 52 some studies on 25 autopsies on people with a history of smoking. Is</p>

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<p>1 the bottom. 2 On Exhibit 1 it says, "Patients have been 3 misdiagnosed." Do you see that? 4 A. Let me find that. Yes. 5 Q. And that means you disagree with the CARD 6 doctors' diagnosis? 7 A. Yes, it does. 8 Q. Did you count the number? 9 A. I have not counted a number, no. 10 Q. So you wouldn't know how many of these 11 would have been plaques-only cases? 12 A. I don't know. 13 Q. And you wouldn't know the number of 14 plaques-only cases in the estimation of the CARD 15 doctors? 16 A. No. 17 Q. Do you assume that doctors at CARD 18 discussed prognosis with their patients? 19 A. I have no idea. 20 Q. You don't make an assumption either way? 21 A. No. 22 Q. And the prognosis will depend on the 23 particular patient findings; correct? 24 A. It should. 25 Q. And then further in paragraph 22 -- I'll</p>	<p>1 A. Yes. 2 Q. But, again, you haven't counted the cases 3 where that has occurred? 4 A. No. I'm looking at the comparison with 5 the Markowitz study in which at least 37 percent 6 of these patients had no asbestosis as the basis 7 for that statement. 8 Q. So you're assuming that if they don't 9 have asbestosis they have minimal pleural 10 plaquing? 11 A. No, but I've seen patients with minimal 12 pleural plaquing who come in telling me that they 13 have asbestosis because that's what Dr. Black and 14 Dr. Whitehouse told them. 15 Q. And in those cases was it Dr. Whitehouse 16 and Dr. Black's reading of the films that there 17 was diffuse pleural thickening? 18 A. I don't know. In order to be accurate 19 and in order to be scientific, you have to reserve 20 the term "asbestosis" for asbestosis. It has 21 nothing to do with pleural disease no matter how 22 severe. 23 Q. And, again, in those cases you don't have 24 a count on how many there were where the CARD 25 doctors considered there was pleural thickening or</p>
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<p>1 read the whole statement. "In fact, patients have 2 been misdiagnosed, and their physicians advised of 3 this misdiagnosed, which subsequently is recorded 4 on death certificates." Do you see that? 5 A. Yes. 6 Q. Do you have any count on the number of 7 cases where that happened? 8 A. No, I don't have a count. 9 Q. And you can't tell us the names of the 10 people? 11 A. No. 12 Q. And this is just your impression from 13 having seen records? 14 A. This is my impression from having seen 15 patients, talked to patients and reviewed records, 16 yes. 17 Q. And these also would come from the cases 18 you've done medical records review on or examined 19 and treated as listed in paragraph 14; correct? 20 A. Yes. 21 Q. Yeah. Here at the bottom of the 22 page seven of your report, Exhibit 1, you say, 23 "Use of the term 'asbestosis' as a wastebasket" 24 term -- "wastebasket," rather, "to describe even 25 minimum pleural plaquing." Do you see that?</p>	<p>1 pleural plaques? 2 A. Other than what's stated in the mortality 3 study. 4 Q. Then in the Dr. Whitehouse report of 5 December 2008, could you refer to page 17? 6 A. Okay. 7 Q. Do you see Item 5? 8 A. Yes. 9 Q. And do you see that 89 percent in the 10 mortality study had pleural thickening? 11 A. Yes. 12 Q. And do you understand that that, in the 13 terms of the CARD mortality study, means diffuse 14 pleural thickening, which was measured? 15 A. Yes, but it's my understanding from 16 reading this report that diffuse pleural 17 thickening was not necessarily defined the way the 18 rest of the scientific community does because 19 Dr. Whitehouse doesn't agree with that definition. 20 So I don't know how many of these had pleural 21 thickening and how many of them had pleural 22 plaques. 23 Q. And you didn't look on the spreadsheets 24 to make a determination? 25 A. I don't have the spreadsheets, and I</p>

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<p>1 THE WITNESS: I think most do not. 2 BY MR. HEBERLING: 3 Q. Most do not? 4 A. I don't think so. 5 Q. Which ones do not? 6 A. I can't tell you offhand. 7 Q. Do you know if Crapo does? 8 A. Crapo, I believe, was the one that was 9 done on the Mormons, who were nonsmokers, so -- 10 Q. And that's been criticized for excluding 11 smokers; correct? 12 A. Yeah, which I found a little odd, because 13 what you want to know as a reference value is what 14 normal lung function is, so -- 15 Q. If normal includes a population of 16 smokers, wouldn't you want to know if the lung 17 function loss is greater than the normal 18 population which includes smokers? 19 A. No. I think that that pretty much 20 muddies the waters because what you want to know 21 is what is the function of a normal lung for any 22 particular person of size, weight and age. 23 Q. Okay. So, then, in Yates is it fair to 24 say there was progressive loss of lung function as 25 noted by the authors?</p>	<p>1 THE WITNESS: Not necessarily. If 2 you have a complete set of medical records or a 3 good history and chest radiographs or if you have 4 information about latency and exposures, physical 5 examination would not be absolutely necessary. 6 BY MR. HEBERLING: 7 Q. Okay. And in medicine nothing is 8 necessarily so in an absolute sense; correct? 9 MR. WEHNER: Object to form. 10 THE WITNESS: As I've said, we never 11 say never in medicine. 12 BY MR. HEBERLING: 13 Q. Right. So would it be fair to say that 14 to perform this diagnosis of exclusion one would 15 generally need a physical exam -- 16 A. No. 17 Q. -- in most cases? 18 A. I wouldn't agree with that. 19 Q. Let's go to paragraph 51. There you 20 begin or you state in the whole paragraph, "It has 21 been my personal experience that patients 22 diagnosed as having asbestosis instead have 23 chronic obstructive pulmonary disease secondary to 24 tobacco smoking." Do you see that? 25 A. Yes.</p>
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<p>1 A. Well, what she says in her final 2 paragraph is that there was an initial loss of 3 lung function followed by a period of relative 4 stability in the majority of the cases and, in a 5 minority, recurring episodes of pleural 6 inflammation appeared to cause further 7 progression. 8 Q. And there was enough progression in the 9 minority to cause the mean for the whole group to 10 incur what they called considerably more loss than 11 predicted values; correct? 12 A. It's probably statistically significantly 13 greater, but it doesn't look like a huge change on 14 an annual basis. 15 Q. Then at paragraph 37 of your report. 16 Have you got that? 17 A. Yes. 18 Q. The first sentence says, "The diagnosis 19 of asbestos-related diffuse pleural thickening is 20 a diagnosis of exclusion." Do you see that? 21 A. Yes. 22 Q. To make that exclusion, is it generally 23 useful to have a physical examination to do that? 24 MR. WEHNER: Object to form. Asked 25 and answered.</p>	<p>1 Q. And I believe you said that opinion 2 applies to the Libby patients as well; correct? 3 MR. WEHNER: Object to form, and 4 misstates prior testimony. 5 THE WITNESS: I am talking about 6 patients that I have seen from the CARD clinic, 7 not patients in general. 8 BY MR. HEBERLING: 9 Q. Okay. So it's only Libby, only CARD 10 clinic patients; correct? 11 A. It is patients that have been referred to 12 me with a diagnosis of asbestosis, and after I 13 evaluate them, I determine that they, in fact, 14 have chronic obstructive pulmonary disease. 15 Q. And this is, again, based upon your 16 records, reviews and exams, treatment of patients 17 that were described in paragraph 14? 18 A. Yes. 19 MR. WEHNER: Objection. Asked and 20 answered. 21 BY MR. HEBERLING: 22 Q. So are you saying that all such patients 23 have COPD, not asbestosis, or are you saying often 24 that this is the case? 25 A. I'm saying the vast majority of patients</p>

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<p>1 that I have seen coming to me with a diagnosis of 2 asbestosis in fact have cigarette smoking-related 3 disease. 4 Q. Would you say that the vast majority of 5 the patients that you have followed and treated 6 fit this category also? 7 A. The patients from -- 8 MR. WEHNER: Object to form. 9 THE WITNESS: What patients are we 10 talking about? 11 BY MR. HEBERLING: 12 Q. In paragraph 14 you say, "And I have 13 evaluated and followed 15 to 20 patients from 14 Libby who were either self-referred or referred by 15 their own primary physicians." Do you believe 16 that your statement that the vast majority of 17 patients with Libby exposures have COPD instead of 18 asbestosis applies to this 15 or 20 patients as 19 well? 20 A. Yes. Some of those patients have pleural 21 plaques, but they don't have asbestosis, and they 22 definitely have COPD. 23 Q. You say some of them. Is this a minority 24 or -- 25 A. I said some of them what?</p>	<p>1 the primary physician or came in themselves even 2 though they'd already been seen and treated at the 3 CARD clinic? 4 MR. WEHNER: Object to form. 5 THE WITNESS: They'd certainly been 6 seen at the CARD clinic. 7 BY MR. HEBERLING: 8 Q. And this applies to all of them? 9 MR. WEHNER: Object to form. 10 THE WITNESS: Applies to all of what? 11 BY MR. HEBERLING: 12 Q. All of the 15 to 20. 13 A. You know, I can't tell you that without 14 looking at the records, but I'm telling you that 15 certainly the vast majority have -- When they come 16 to me for an oxygen requirement, for shortness of 17 breath, they have chronic obstructive pulmonary 18 disease related to tobacco smoking. 19 I'm going to have to take a break because 20 I'm losing my voice. 21 Q. I'm sorry. We're pretty close to the 22 end. 23 A. Okay. Let me just have a short break. 24 (Brief recess.) 25 ////</p>
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<p>1 Q. You said that some of the patients have 2 COPD. 3 A. No. I said some of the patients have 4 pleural plaques. 5 Q. Yeah. Pleural plaques and COPD; correct? 6 Maybe I didn't hear your answer right. 7 A. They come to me because they're short of 8 breath and they have a diagnosis of asbestosis, 9 and I found that they may have some pleural 10 plaques but their cause of shortness of breath is 11 their COPD. 12 Q. If they have a diagnosis of asbestosis, 13 how is it they were sent to you? 14 A. Sometimes the family doctor sends them 15 for a second opinion. Sometimes they just come to 16 me for a second opinion, or they come to Rocky 17 Mountain Heart & Lung. 18 Q. So you said that these -- Again, 19 referring to this 15 to 20 patients, I believe you 20 said that they have a diagnosis of asbestosis? 21 A. They have been given a diagnosis of 22 asbestosis at the CARD clinic when, in fact, they 23 have chronic obstructive pulmonary disease that 24 needs treatment. 25 Q. And somehow they were referred to you by</p>	<p>1 BY MR. HEBERLING: 2 Q. So I was asking about paragraph 14, the 3 three categories of people that you've seen, 4 records reviews, second opinion exams and then 5 patients you've followed. 6 A. That's correct. 7 Q. So would it be correct to say that for 8 all three categories the vast majority of patients 9 diagnosed as having asbestosis by CARD, in fact, 10 have COPD from smoking? 11 A. Yes. That's my opinion. 12 Q. Have you done numbers on these various 13 categories of patients? 14 MR. WEHNER: Objection. Asked and 15 answered. 16 THE WITNESS: No. 17 BY MR. HEBERLING: 18 Q. Have you diagnosed asbestosis in any of 19 these patients? 20 A. I don't recall doing that. Certainly a 21 significant number of them have pleural plaques. 22 Q. Have you diagnosed asbestos-related 23 pleural disease in any of these patients 24 referenced at paragraph 14? 25 MR. WEHNER: Object to form.</p>

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<p>1 THE WITNESS: I have seen many people 2 with pleural plaques. 3 BY MR. HEBERLING: 4 Q. Right. And you don't consider pleural 5 plaques a disease; right? 6 MR. WEHNER: Objection. Asked and 7 answered. 8 THE WITNESS: You know, I consider it 9 a marker of asbestos exposure, and I have seen 10 those. I have not seen anybody with restrictive 11 lung disease from diffuse pleural thickening. 12 BY MR. HEBERLING: 13 Q. So would it be correct to say that in all 14 of these patients listed in paragraph 14 you have 15 not diagnosed any with asbestos-related pleural 16 disease; correct? 17 A. No. I've diagnosed some with pleural 18 plaques. 19 Q. And are you diagnosing that as a disease? 20 A. I am diagnosing it as an entity, as a 21 marker of asbestos exposure. Do I think it's 22 causing them symptoms or signs? No. 23 Q. Okay. So I still don't think I've quite 24 got an answer. You haven't actually diagnosed 25 anybody with asbestos-related pleural disease;</p>	<p>1 BY MR. HEBERLING: 2 Q. Of course there's no way to tell who that 3 has been from the information at paragraph 14; 4 correct? 5 A. Because I didn't keep a record. 6 Q. And just to make the record clear, you 7 haven't delivered any medical records of any of 8 the patients referenced at paragraph 14; correct? 9 A. I have not personally delivered any 10 records, no. 11 Q. To us? 12 A. No. 13 Q. Right. And of the patients, again, 14 referenced in paragraph 14, where there's COPD 15 have you diagnosed emphysema? 16 A. Again, you know, if they had significant 17 emphysematous changes on x-ray, I would have 18 probably mentioned the term "emphysema," but COPD 19 covers emphysema and chronic bronchitis and 20 reactive airways disease. 21 Q. Let's go to paragraph 52. 22 It begins, "Dr. Whitehouse states in his 23 report to this court that only 15 percent of 24 smokers develop clinically significant COPD." Do 25 you see that?</p>
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<p>1 correct? 2 MR. WEHNER: Object to form. 3 THE WITNESS: In the sense that I do 4 not think that asymptomatic pleural plaques are a 5 disease, that's correct. 6 BY MR. HEBERLING: 7 Q. I'm sorry. It's getting late, but did 8 you say that you had diagnosed anybody with 9 diffuse pleural thickening? 10 A. I said I had not. 11 Q. That's what I thought. Okay. 12 And, again, of all of these people 13 referenced in paragraph 14, are they all smokers 14 or ex-smokers? 15 A. I can't tell you that without reviewing 16 their records, but certainly the patients with 17 COPD are either current or ex-smokers. 18 Q. And, of course, our side can't evaluate 19 what you've done because we haven't received any 20 of the records either; correct? 21 MR. WEHNER: Object to form. 22 THE WITNESS: No. I don't know that. 23 I know that when the doctors at the CARD clinic 24 refer someone over, they certainly get a copy of 25 my report.</p>	<p>1 A. Yes. 2 Q. Now, that statement actually comes from 3 ATS 2004; correct? 4 A. I don't recall that -- seeing that on ATS 5 2004. 6 Q. I can't find it right now. The statement 7 ultimately originates in the surgeon general's 8 report; correct? 9 MR. WEHNER: Object to form. 10 THE WITNESS: I don't know where he 11 got the statement, but I don't believe that it's 12 true. I certainly don't agree with it. 13 BY MR. HEBERLING: 14 Q. Looking at the December 2008 15 Dr. Whitehouse report, at page 48 the bottom line 16 says, ATS 1995, page 79, states, Only about 17 15 percent of cigarette smokers develop clinically 18 significant COPD. Do you see that? 19 A. I see that. I guess that would depend on 20 what your definition of clinically significant is. 21 Q. And are you familiar with the ATS 1995 22 COPD statement? 23 A. I'm sure I've looked at it. 24 Q. You cite at paragraph 52 some studies on 25 autopsies on people with a history of smoking. Is</p>

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<p>comment.</p> <p>Q. Okay. Then below the discussion of Mr. Dickerman, do you see a chart of never smokers from the Libby claimants' medical records?</p> <p>A. Yes.</p> <p>Q. Did you review any of those records?</p> <p>A. None of those look like familiar names, but I can't say for sure.</p> <p>Q. If, in fact, we have all of these never smokers with reduced FEV1/FVC ratios, doesn't that indicate that it's possible to get some kind of obstructive defect from asbestos disease?</p> <p>MR. WEHNER: Objection.</p> <p>Hypothetical.</p> <p>THE WITNESS: Again, these are bits and pieces of pulmonary function tests in patients that I don't know. I haven't seen their x-rays. I really can't comment.</p> <p>BY MR. HEBERLING:</p> <p>Q. You've said all obstructive pattern associated with Libby amphibole asbestos disease as described by Dr. Whitehouse is, in fact, COPD secondary to tobacco smoking. Could there be an obstructive pattern in some of these people due to asthma?</p>	<p>MR. HEBERLING: Let's see the date on it.</p> <p>MR. WEHNER: April 16th, 2000 -- Wait a second.</p> <p>Yeah. April 16th, 2009.</p> <p>MR. HEBERLING: Can we make a copy of it?</p> <p>MR. WEHNER: Yeah. If you'd like. Here. I'll pull out -- You can look at this e-mail, but I'm going to pull off the e-mail.</p> <p>(Brief recess.)</p> <p>(Exhibit 7 was marked.)</p> <p>MR. HEBERLING: Back on the record.</p> <p>BY MR. HEBERLING:</p> <p>Q. I've been examining Exhibit 7, and the first page is a set of e-mails. Here is an e-mail of April 9th, which I do have, and then the e-mail of April 16th, which I do not have. Doctor, does it appear that all dates of birth have been removed?</p> <p>MR. WEHNER: You're now looking at the medical record?</p> <p>BY MR. HEBERLING:</p> <p>Q. Yeah. Exhibit 7.</p> <p>A. Yes. The ages are given, but the dates</p>
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<p>A. It's possible.</p> <p>Q. Did you rule out asthma in all of the patients that you have reviewed or seen as listed at paragraph 14?</p> <p>A. Certainly the patients I've seen I have done pulmonary function testing on, and it is possible to differentiate asthma from emphysema in my pulmonary function testing.</p> <p>Q. Did you rule out asthma in all of those cases?</p> <p>A. Again, I don't recall, but I believe that the majority of them are not only smokers but heavy smokers with COPD.</p> <p>Q. Then, at paragraphs 59, 60 and 61, you discuss three people, but we've received no medical records on those people, so --</p> <p>MR. WEHNER: That's not true, Jon.</p> <p>MR. HEBERLING: Not true?</p> <p>MR. WEHNER: You got redacted medical records. Bernie sent them to you by e-mail.</p> <p>MR. HEBERLING: I never received any.</p> <p>MR. WEHNER: I've got the e-mail.</p> <p>MR. HEBERLING: I never received it.</p> <p>MR. WEHNER: That's fine. I've got an e-mail.</p>	<p>of birth have been removed.</p> <p>Q. And can you identify who these people are by name?</p> <p>A. Not today. I don't remember their names.</p> <p>Q. For the record, we've just been through a procedure whereby Dr. Whitehouse produced at his deposition a way of identifying redacted records as to who the patient was, and since the patient name, Social Security number and birth are all redacted, I don't see how Dr. Whitehouse could identify who the patient is. Is there any way to identify the patient so that Dr. Whitehouse can respond to what you've said about them?</p> <p>MR. WEHNER: Object. Asked and answered.</p> <p>THE WITNESS: I don't remember the patients' names as I sit here today. I'm sure I can find the names. I'll have to go through the records at Rocky Mountain Heart & Lung.</p> <p>BY MR. HEBERLING:</p> <p>Q. As you sit here today, can you tell which one is Mr. M or Ms. J or Ms. N?</p> <p>A. No. I just told you I don't remember their names.</p> <p>Q. You've got a copy of Exhibit 7. Does it</p>

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<p>1 appear that you saw each of these people just 2 once? 3 A. Yes. 4 Q. And so the first one says "Seen at the 5 request of Libby Medical Program"? 6 A. Yes. 7 Q. So that would be the Grace medical 8 program? 9 A. That's my understanding, yes. 10 Q. It would be some form of second opinion? 11 A. Yes. 12 Q. Then this second patient says "Second 13 opinion with regard to whether her requirement for 14 supplemental oxygen is related to asbestos 15 exposure"? 16 A. Yes. 17 Q. And would that be a question that likely 18 came through the Grace Libby Medical Program as 19 well? 20 A. I don't recall specifically, but I would 21 think so, yes. 22 Q. Then the third patient says "70-year-old" 23 (sic) "WF who comes in for a second opinion about 24 her lung disease." Do you see that? 25 A. Yes.</p>	<p>1 Q. This is separate? 2 A. Yes. 3 Q. So in addition to these five patients 4 with lung cancer, have you seen any other patients 5 from Libby that were not listed in paragraph 14? 6 A. No. I don't think so. 7 Q. And you refer to smoking histories. Did 8 you take a history from all five patients? 9 A. Yes. 10 Q. And these are all patients you examined 11 or treated? 12 A. Yes. On a number of them, I did a 13 bronchoscopy to make a diagnosis and/or sent them 14 for a transthoracic needle biopsy and got a 15 diagnosis and referred them on to the appropriate 16 radiation oncologist or oncologist for treatment. 17 Q. Had any of these patients been seen at 18 the CARD clinic? 19 A. Yes. Some of them had been. 20 Q. And your opinion here that the majority 21 of them had pleural plaques and any other opinions 22 you have about them would be based in part on your 23 examination and treatment of them; correct? 24 A. They all had smoking histories that 25 placed them at high risk for lung cancer without</p>
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<p>1 Q. Does that appear that she was 2 self-referred? 3 A. I believe this one was self-referred, not 4 referred by a physician. Let me see. 5 I don't recall, but I believe she did not 6 come through the Libby Medical Program. 7 Q. It says the referring physician was Mark 8 Heppe, but Dr. Heppe is at the CARD clinic; right? 9 A. Yes. 10 Q. Do you believe Dr. Heppe referred this 11 lady to you? 12 A. He may have. 13 Q. You don't know? 14 A. I don't know. If it says he did, then he 15 may have. 16 Q. Then at page 23 of your report, 17 paragraph 66. 18 Have you found that? 19 A. Yes. 20 Q. It says, "I have seen five patients from 21 Libby and/or the CARD clinic with lung cancer"? 22 A. Yes. 23 Q. Are these included with the patients 24 listed with paragraph 146 your report? 25 A. No.</p>	<p>1 invoking any other possible risk factors. 2 Q. And are your opinions on these five 3 patients based in part on your examination and 4 treatment of them? 5 A. Certainly I, you know, made diagnoses of 6 lung cancer by examining them and doing the 7 appropriate tests. 8 MR. HEBERLING: That's all of the 9 questions I have. 10 THE WITNESS: Okay. 11 MR. WEHNER: Anybody on the phone? 12 Hello? 13 No? 14 Going once. 15 MR. HEBERLING: Does anyone want to 16 ask any questions of this witness? 17 MR. WEHNER: Thank you. 18 THE REPORTER: Do you want signature? 19 MR. WEHNER: Yeah. We'll sign. 20 (Whereupon, the Telephonic Deposition 21 of GAIL STOCKMAN, M.D. was concluded at 4:59 p.m., 22 and signature was reserved.) 23 24 25</p>

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